

EXHIBIT CC

Pellegrino, Fran

From: Pamela.Sylwestrzak@marsh.com
Sent: Wednesday, June 24, 2009 4:08 PM
To: Kidder, Buck
Cc: Van Wagenen, Bert
Subject: RE: Wornick - Fw: Warranty Clauses in MRE Contract

We are reporting and hopefully today. I've referred to our claims department and I know they were hopping this morning so it may not happen until tomorrow.

Pam Sylwestrzak
Senior Vice President
Marsh USA, Inc.
500 West Monroe
Chicago, IL 60661
Phone (312) 627-6215
Cell (312) 560-6809
Fax (312) 627-6272
email: pamela.sylwestrzak@marsh.com

"Kidder, Buck"
<bkidder@piaint.com>

06/24/2009 03:01
PM

To
Pamela M
Sylwestrzak/CHI-IL/US/Marsh/MMC@MMC

cc
"Van Wagenen, Bert"
<bvanwagenen@piaint.com>

Subject
RE: Wornick - Fw: Warranty Clauses
in MRE Contract

Pam:

Has this been reported to CRI ?

If not, please do so -- in keeping with policy provisions.

I have asked our adjuster to contact Michael Hysche.

Thanks.

Buck

Buck Kidder

Vice President
Professional Indemnity Agency
A subsidiary of HCC Insurance Holdings, Inc.

Mailto:bkidder@piaint.com
Tel: (914) 242-7851-----Original Message-----
From: Pamela.Sylwestrzak@marsh.com [mailto:Pamela.Sylwestrzak@marsh.com]

Sent: Wednesday, June 24, 2009 3:39 PM
To: Kidder, Buck
Subject: Wornick - Fw: Warranty Clauses in MRE Contract

Buck,:

Over the last few hours Wornick continues to get more and more data. It looks like our contract for the MRE only allows the government to require us to warrant 6 months of inventory and after that they are liable for rework costs. Also, they did not use this vendor for the last quarter, so exposure appears to be more limited. The recall has not been issued yet either.

Wornick have always been pro-active in their notifications, so I hopefully this turns out to be a small issue with no claim, we can work with with the original quote. Right now would guess the recall costs could be in the \$2MM-\$4MM range, of which contractually Wornick should have no liability, but it still will come down to the suppliers financial viability.

Please see warranty clauses below in government MRE contract with respect to the Plainfield Milk matter.

Pam Sylwestrzak
Senior Vice President
Marsh USA, Inc.
500 West Monroe
Chicago, IL 60661
Phone (312) 627-6215
Cell (312) 560-6809
Fax (312) 627-6272
email: pamela.sylwestrzak@marsh.com
----- Forwarded by Pamela M Sylwestrzak/CHI-IL/US/Marsh/MMC on
06/24/2009
02:35 PM -----

"McDulin, Dustin"

<Dustin.McDulin@w

ornick.com>

To

Pamela M

06/24/2009 02:24
Sylwestrzak/CHI-IL/US/Marsh/MMC@MMC
PM

cc

Subject

FW: Warranty Clauses in MRE

Contract

2

HCC00849

HCC00849

Pam,

Here is the warranty clause in our MRE contract. We are reviewing it to make sure the 6 month warranty period is applicable. You can also review or forward as necessary.

Dustin McDulin
Chief Financial Officer
The Wornick Company
dustin.mcdulin@wornick.com
P 513-552-7448
F 513-552-7604
M 513-479-0562

From: Kowalchik, John
Sent: Wednesday, June 24, 2009 2:57 PM
To: McDulin, Dustin
Subject: FW: Warranty Clauses in MRE Contract

May be helpful for attorney's and/or insurance providers.

JK

John Kowalchik
Sr. Vice President, Business Development
(o) 513-552-7406
(f) 513-552-7606
john.kowalchik@wornick.com

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From: Thornton, Dorothy
Sent: Wednesday, June 24, 2009 1:42 PM
To: Hyche, Michael; Kowalchik, John; Geisler, Jon
Cc: Castillo, Gabriel
Subject: Warranty Clauses in MRE Contract

As far as I can tell, there are only 2 warranty clauses in the MRE contract. I have copied both - in their entirety - below.

52.246-9P35 WARRANTY OF SUPPLIES (APR 2003) DSCP

(a) Definitions.

"Acceptance", as used in this clause, means the act of an authorized representative of the government by which the government assumes for itself, or as an agent of another, ownership of existing supplies, or approves specific services as partial or complete performance of the contract.

"Correction", as used in this clause, means the elimination of a defect.

"Supplies", as used in this clause, means the end item furnished by the contractor and related services required under the contract. The word does not include "data".

(b) Contractor's Obligations.

(1) Notwithstanding inspection and acceptance by the government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the contractor warrants that for 6 months after receipt of supplies at destination:

(i) all supplies furnished under this contract will be free from defects in material or workmanship and will conform with all requirements of this contract; and

(ii) the preservation, packaging, packing and marking, and the preparation for, and method of, shipment of such supplies will conform with the requirements of this contract..

(2) When return of the supplies to the contractor and redelivery, if applicable, is required, transportation charges and responsibility for the supplies while in transit shall be borne by the contractor. Contractor shall also be liable for:

(i) handling costs and incidental charges incurred by the government in the preparation of the above described supplies for return to the contractor and in return of said supplies to storage, after redelivery by the contractor; and

(ii) for cost of government examination of the corrected or replaced supplies computed and charged at the flat rate of \$49.28 per hour.

(1) Any supplies or parts thereof, corrected or furnished in replacement under this clause, shall also be subject to the terms of this clause to the same extent as supplies initially delivered. The warranty, with respect to supplies or parts thereof, shall be equal in duration to that in paragraph (b)(1) of this clause and shall run from the date of receipt at destination of the corrected or replaced supplies.

(4) All implied warranties of merchantability and "fitness for a particular purpose" are excluded from any obligation contained in this contract.

(c) Remedies Available to the Government.

(1) The contracting officer shall give written notice to the contractor of any breach of warranties in paragraph (b)(1) of this clause within 7 months from receipt of supplies at destination.

(2) Conformance of supplies or parts thereof subject to warranty action shall be determined in accordance with the inspection and acceptance procedures contained in the contract except as provided herein. If the contract provides for sampling, the contracting officer may group any supplies delivered under this contract. The size of the sample shall be that required by the sampling procedure specified in the contract for the quantity of supplies on which warranty action is proposed, except when projecting sampling results. Warranty sampling results may be projected over supplies in the same shipment or other supplies contained in other shipments even though all of such supplies are not present at the point of reinspection and regardless of whether such supplies have been issued or consumed, provided; the supplies from which the samples were drawn are reasonably representative of the quantity on which warranty action is proposed; and the defects found in the sample size are sufficient to reject the quantity of supplies on which warranty action is proposed, even though the sample size may be less than that required for such quantity. The original inspection lots need not be reconstituted, nor shall the contracting officer be required to use the same lot size as on original inspection. Within a reasonable time after the notice, the contracting officer may exercise one or more of the following options, and also, following the exercise of any option, may unilaterally change it to one or more of the other options set forth below:

(i) Require an equitable adjustment in the contract price for any supplies or group of supplies;

(ii) Screen the supplies grouped under this clause at contractor's expense and return all nonconforming supplies to the contractor for correction or replacement;

(iii) Require the contractor to screen the supplies at depots designated by the government within the continental United States and to correct or replace all

nonconforming supplies;

(iv) Return any supplies or group of supplies under this clause to the contractor (irrespective of the F.O.B. point or the point of acceptance) for screening and correction or replacement;

(v) Return or hold for contractor's account any supplies or group of supplies delivered hereunder, whereupon the contractor shall repay the contract price paid therefore. In such event, the government may procure similar supplies upon such terms and in such manner as the contracting officer may deem appropriate, and charge to the contractor the additional cost occasioned the government thereby.

(3) When either option three or four of this clause is exercised, the contractor is required to submit in writing and within 30 days after receipt of notice of such invocation a schedule for either:

(i) correction and/or replacement of all defective supplies and subsequent redelivery of the returned supplies; or,

(ii) screening defective supplies at each depot involved and subsequent redelivery of all corrected and/or replaced supplies.

Such schedule will become a part of the contract delivery schedule upon agreement thereto by the government. If the contractor fails to provide an agreeable schedule within the specified period, or any extension agreed to by the government, the government may correct the items and charge the contractor's account, or issue a contract for correction of the items and charge the contractor's account, or exercise one or more of the remedies specified in paragraph (4) below.

(4) If the contractor fails to accept return of the nonconforming supplies, or fails to make redelivery of the corrected or replaced supplies to the government within the time established, or fails to make progress after their return to correct or replace them so as to endanger performance within the time established for redelivery and does not cure such failure within a period of 10 days (or such longer period as the contracting officer may authorize in writing) after receipt of notice from the contracting officer specifying such failure, the contracting officer may exercise one or more of the following remedies:

(i) Retain or have the contractor return the nonconforming supplies and require an equitable adjustment in the contract price.

(ii) Return or hold the nonconforming supplies for contractor's account, or require the return of the nonconforming supplies and then hold for contractor's account, whereupon the contractor shall repay the contract price therefore. In such event, the government may procure similar supplies upon such terms and in such manner as the contracting officer may deem appropriate, and charge to the contractor the additional costs occasioned the government thereby.

(iii) If the contractor fails to furnish timely disposition instructions, dispose of the nonconforming supplies for the contractor's account in a reasonable manner, in which case the government is entitled to reimbursement from the contractor or from the proceeds for the reasonable expenses of the care and disposition of the nonconforming supplies, as well as for any other costs incurred or to be incurred.

(5) The rights and remedies of the government provided in this clause are in addition to, and do not limit, any rights afforded to the government by any other clause of this contract.

(d) Failure to agree upon any determination to be made under this clause shall be a dispute concerning a question of fact within the meaning of the "disputes" clause of this contract.

(e) When the contract specifies ultimate delivery of supplies to a location outside the contiguous United States, such location shall be deemed the destination for purposes of this clause.

Limitation of Liability (Feb 1997)

(a) Except as provided in paragraphs (b) and (c) of this clause, and except for remedies expressly provided elsewhere in this contract, the Contractor shall not be liable for loss of or damage to property of the Government (excluding the supplies delivered under this contract) that-

(1) Occurs after Government acceptance of the supplies delivered under this contract; and
(2) Results from any defects or deficiencies in the supplies.

(b) The limitation of liability under paragraph (a) of this clause shall not apply when a defect or deficiency in, or the Government's acceptance of, the supplies results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents,

or equivalent representatives who have supervision or direction of-

- (1) All or substantially all of the Contractor's business;
- (2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or
- (3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through purchase or use of the supplies required to be delivered under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects or deficiencies in, the supplies delivered under this contract.

Dorothy A. Thornton
Contract Administrator
The Wornick Company
phone: 513-552-7412
fax: 513-552-7452
dorothy.thornton@wornick.com

To: Pamela M Sylwestrzak/CHI-IL/US/Marsh/MMC@MMC
CC:
From: "McDulin, Dustin" <Dustin.McDulin@wornick.com>

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To: Pamela M Sylwestrzak/CHI-IL/US/Marsh/MMC@MMC
cc: "Van Wagenen, Bert" <bvanwagenen@piaint.com>
From: "Kidder, Buck" <bkidder@piaint.com>

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